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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/014,980	12/11/2001	Matthew Thomas Heisey	8623	3340

27752 7590 11/10/2003

THE PROCTER & GAMBLE COMPANY
INTELLECTUAL PROPERTY DIVISION
WINTON HILL TECHNICAL CENTER - BOX 161
6110 CENTER HILL AVENUE
CINCINNATI, OH 45224

EXAMINER

PADEN, CAROLYN A

ART UNIT	PAPER NUMBER
1761	

DATE MAILED: 11/10/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/014,980	HEISEY ET AL.	
	Examiner Carolyn A Paden	Art Unit 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 17 March 2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-7 and 28 is/are rejected.
- 7) Claim(s) 8-27 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
 If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>3-17-03</u> . | 6) <input type="checkbox"/> Other: _____ . |

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Mays (WO 97/39170) and see page 3, example 1. The patent teaches all of the compounds of the claims

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Shawn (0,336,894) and see column 14, lines 5-27. The patent teaches all of the compounds of the claims.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Cilento (EP 0,512,855) and see page 4, example 1.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3 and 28 are rejected under 35 U.S.C. 102(b) as anticipated by Morley (4,400,406 or 4,400,405) and see column 7 of each patent.

Each of the Morley patents disclose a frozen dessert food that contains a stabilizer system. One patent shows a dietetic dessert and one shows a regular frozen dessert. The '405 patent will be discussed herein but the other patent could be equally applied as a reference against the claims. At column 7 of the '405 patent, the stabilizer system is described to contain 3 component stabilizers.:

1. Water-binding gum in the amount of 0.12% and 0.04%.

Examples of these gums are propylene glycol alginate and sodium carboxymethyl cellulose (CMC).

2. Gelling agents in the amount of 0.2% and 0.5%. Examples of these agents are sodium alginate and pectin.

3. Blocking agents in the amount of 0.1% and 1.0%. Examples of these agents are microcrystalline cellulose and cellulose fibers.

In the caloric test example, oil is added to the product.

Claim*s 1-7, 10—21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morley (4,400,405 or 4,400,406).

Each of the Morley patents disclose a frozen dessert food that contains a stabilizer system. One patent shows a dietetic dessert and one shows a regular frozen dessert. The '405 patent will be discussed herein but the other patent could be equally applied as a reference against the claims. At column 7 of the '405 patent, the stabilizer system is described to contain 3 component stabilizers.:

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3. Blocking agents in the amount of 0.1% and 1.0%. Examples of these agents are microcrystalline cellulose and cellulose fibers.

In the caloric test example, oil is added to the product.

The references do not differ from claims 1-3 and 28 at all. Claim 4 appears to differ from Morley in the specific recitation of carboxymethylcellulose or CMC but to use a combination of CMC and alginate would have been an obvious way to modify the components of the water-binding gum. No unobvious or unexpected result is seen to flow from

the recitation of the particular pectin that is described in claims 5 and 6 since they all are gelling agents. Titanium dioxide is not mentioned in the reference, but is a well known whitener for food products. It would have been obvious to one having ordinary skill in the art to utilize CMC and titanium dioxide in the composition of Morley in order to modify the gelling and whitening ingredients of the final product.

Claims 8-27 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is 703-308-3294. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached on (703) 308-3959. The fax phone number for the organization where this application or proceeding is assigned is 703-305-7718.

Application/Control Number: 10/014,980
Art Unit: 1761

Page 6

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

Carolyn Paden
CAROLYN PADEN 11-5-03
PRIMARY EXAMINER
GROUP 1360 1761